



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 19 जनवरी, 2023 / 29 पौष, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 13th January, 2023

No. Shram (A) 3-8/2021 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette” :—

Sl. No.	Case No	Petitioner	Respondent	Date of Award/Order
1.	Ref. 93/2017	Sh. Santosh Kumar	M/s Fresenius Kabli Oncology Ltd.	30-09-2022
2.	Ref. 192/2022	Smt. Yeshe Dolma	XEN, HPPWD (B&R) Kaza	21-10-2022

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 93 of 2017
Instituted on : 7-6-2017
Decided on : 30-09-2022

Santosh Kumar s/o Shri Kapil Dev Singh, r/o Village Khokhra, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana, through Shri J.C. Bhardwaj, President HPAITUC, HQ Saproon, Solan, H.P. . *Petitioner.*

VERSUS

M/s Fresenius Kabi Oncology Ltd. (Formerly, Daour Pharma Ltd.) Plot No. 19, HPSIDC, Industrial Area Baddi, District Solan, H.P. through its Factory Manager . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Rajiv Sharma, Advocate

ORDER

In a stint and punctual observation as well as in strict compliance to directions passed by the Hon’ble High Court of Himachal Pradesh in Civil Miscellaneous Petition Main (Original) No. 53 of 2022 in case titled as **M/S Fresenius Kabi Oncology Ltd. (Formerly known as Dabur Pharma Ltd.)**, having formulation and dosage manufacturing plant at Plot No. 19, HPSIDC, Industrial Area Baddi, District Solan, H.P. through, its Factory Manager **Versus Shri Santosh Kumar s/o Shri Kapil Dev Singh**, r/o Village Khokhra, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana, decided on 29.07.2022, whereby the Hon’ble High Court of H.P., had directed this Tribunal to decide the preliminary issue afresh as expeditiously not in any event later than 30.9.2021 (or say 30.9.2022).

2. The following reference petition has been, received from the Appropriate Government, vide notification dated 18.05.2017, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether termination of services of Shri Santosh Kumar s/o Shri Kapil Dev Singh r/o Village Khokhra, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana, w.e.f. 09.05.2016 after conducting domestic enquiry, by the management of M/s Fresenius Kabi Oncology Ltd. (Formerly, Daour Pharma Ltd.) Plot No. 19, HPSIDC, Industrial Area Baddi, District Solan, H.P, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?”

3. Material facts necessary for the disposal of the present reference petition as stated by the petitioner in his claim petition are thus that the petitioner started working with the respondent as Junior Operator, Production since 1.3.1997 and remained continued as such in the employment of the respondent management till 9.5.2016, when his services were dismissed after conducting improper, illegal and partial domestic enquiry not conducted in accordance with law and is in clear cut violation of principles of natural justice as show cause notice dated 6.11.2015 issued that the petitioner while working in manufacturing area of production department, while transferring bulk solution from mixing tank to pressure vessel for oxaliplatin injectin product, caused spillage of the solution in violation of clause 14(b), 17(a) and 17(b) of the Certified Standing Orders. To this a detailed reply was filed. The petitioner was chargesheeted on the basis of charges, enquiry was held against him. He has challenged the enquiry report on the ground that it was conducted in violation of principles of natural justice. On the basis of the findings of the enquiry officer, he was removed from service on 9.5.2016. He has also claimed that he has been unemployed since the time of his removal from service and has alleged that the punishment imposed upon him of removal is illegal and unjustified.

4. In the footnote of the claim, the petitioner prayed for the following relief:

“It is therefore prayed that your honour may kindly be pleased to set aside the so called enquiry conducted by the respondent management against the petitioner by exercising the jurisdiction u/s 11-A of the Act 14 of 1947 as subsequent orders of dismissal from the service may kindly be set aside since the date of illegal removal on 9.5.2016 with full back wages, seniority and continuity along-with all other consequential service benefits and with costs throughout ”.

5. The lis was resisted and contested on filing the reply on inter-alia preliminary issues qua maintainability, petitioner not come to the Court with clean hands, not a legal reference received from the appropriate government which is nonest and non-application of judicial mind.

6. On merits, it is submitted that the enquiry officer held the enquiry in terms of Certified Standing Orders and as per the fundamental principles of natural justice. The enquiry officer conducted the enquiry in lawful manner and without prejudice any of the right of the petitioner. The petitioner is gainfully employed. The petitioner had caused huge loss to the company. The procedure was duly explained. The respondent prayed for the dismissal of the claim petition.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition. It is asserted that the services of the petitioner were terminated with the intention to cast stigma on the integrity and working of the petitioner. The principles of natural justice have been flouted at every stage.

8. On the pleadings of the parties, the following preliminary issues were framed by my Ld. Predecessor as is evident from order dated 28.09.2018:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of principles of natural justice as alleged? . . .*OPP*.
2. Relief:

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid preliminary issue are as follows:

Issue No.1 : No

Relief : Reference is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1.

12. A preliminary issue was framed as to whether the domestic enquiry conducted by the respondent against the petitioner is unfair, unjustified and in violation of the principles of natural justice. The case propounded by the petitioner in brief is that the services of the petitioner were terminated arbitrarily on the basis of false chargesheet and enquiry report on false and baseless allegations as the enquiry conducted against him is not fair, just and proper. It is also the case of the petitioner that the enquiry officer who is a lawyer had commenced the enquiry against the petitioner in an arbitrary manner and did not adhere the petitioner to defend himself properly and adequately through union representative or offered opportunity to cross-examine the management witnesses.

13. Again, it is also the grouse of the petitioner that the enquiry officer had not conducted the enquiry proceedings in a fair and proper manner. The enquiry officer did not even comply with the basic principles of natural justice during conducting the enquiry proceedings. The enquiry officer gave his findings against the petitioner without any cogent reason and law, thus, the enquiry is not fair, just and reasonable. The defence of the petitioner was totally ignored. The enquiry officer did not explain the procedure to be adopted during the course of enquiry. The enquiry proceedings were written by the enquiry officer as per his own choice and as per the witnesses of the management. Though, the petitioner participated in the enquiry proceedings but he was not allowed to submit his defence in a proper manner and not allow to cross-examine the management witnesses. The daily orders and documents were not supplied to the petitioner. The enquiry officer had not recorded the exact version of the witnesses. The enquiry proceedings conducted by the enquiry officer were totally perverse and against the principles of natural justice. The punishment awarded to the petitioner by terminating/dismissing his services were not at all warranted and the punishment of dismissal was also stated to be disproportionate.

14. On the allegations made thereto in the chargesheet, the petitioner had denied having been falsely implicated and not indulged in any of the allegations. As per the petitioner, the sole

intention of the respondent management was only to dismiss his services under the guise or pretext of victimization and unfair labour practice.

15. On the contrary, the case set up from the side of the respondent management is that the enquiry has been conducted as per the principle of natural justice and the Certified Standing Orders and the petitioner has been dismissed after conducting a just, fair and proper domestic enquiry. The petitioner had duly participated in the proceedings and produced his witnesses. The chargesheet has been duly supplied to the petitioner. During the course of enquiry the petitioner had filed reply to the chargesheet. The procedure prescribed for disciplinary action under the Certified Standing Orders was duly followed and so were the principles of natural justice followed. The petitioner cross-examined the management witnesses. Each and every day proceedings have been duly signed by him. He was given the copies of day to day proceedings of the enquiry. The enquiry officer had given a detailed and a reasoned enquiry report. The enquiry report was also supplied to the petitioner and a reply has been duly filed by him.

16. In order to substantiate its plea, The petitioner stepped into the witness dock as (PW-1) to depose that the company had issued appointment letter (P-2) to him and he was confirmed by the company vide letter dated 22.5.2007 (P-3). Vide (P-4 and P-5) the company used to grant him annual increments. He further deposed that chargesheet (P-6) was issued to him to which he filed reply (P-7). He also stated that he was not allowed to cross-examine the witnesses during the enquiry and was not allowed to put his case by the enquiry officer. Enquiry report along-with show cause notice-cum-proposed punishment letter (P-9) was served upon him which was replied by him vide (P-10) and thereafter he was dismissed from service vide (P-11). In cross-examination he admitted that he was on duty in the factory on 5.11.2015 and was working on manufacturing (MFG-2) at around 11:00 PM and at that time Oxaliplatin injections were being manufactured in the unit. He admitted that the said injection is used for the treatment of cancer. He admitted that the solution made for the production of the injection has high radiations. He denied that a special dress is provided for this operation. He denied that due to his act and conduct the solution had fallen sown. He denied that he had not taken any steps immediately to check the leakage of the solution. He further denied that solution worth ` 6,91,000/- was wasted due to leakage resulting in high radiations in the factory. He admitted that (P-2) has been issued to him. He further admitted that the entire enquiry officer had apprized him about the date of enquiry. He denied that he was afforded full opportunity to cross-examine the witnesses.

17. On the other hand, the respondent examined (RW-1) Shri Vikash Chander, Manager Production, who tendered in evidence his sworn in affidavit (RW-1/A). He also tendered in evidence appointment letter of the petitioner (RW-1/B), application for employment and joining papers (RW-1/C), incident information report (RW-1/D), show cause and suspension letter (RW-1/E), copy of show cause in Hindi (RW-1/H), reply of petitioner (RW-1/J), letter initiating enquiry (RW-1/K), letter appointing a MR (RW-1/L), letter appointing enquiry officer (RW-1/M), second show cause notice (RW-1/MN, reply to second show cause notice (RW-1P) and the dismissal letter (RW-1/Q). In cross-examination, he admitted that there were no complaints against the petitioner before the present chargesheet. He denied that the petitioner was not allowed the services of the defence assistant of his choice. He denied that the production officer had refused the petitioner from filtration. He also denied that the witnesses of the petitioner were not allowed to be examined.

18. Another witnesses examined by the respondent (RW-2) Shri Hardesh Sharma, enquiry officer also tendered in evidence his affidavit (RW-2/A) wherein he has stated that after appointment as enquiry officer, he issued notice dated 12.1.2016 to the petitioner to join the enquiry proceedings and fixed the enquiry for 22.1.2016 on which date, he apprized the parties about the procedure of the enquiry. He stated that he conducted the enquiry as per the principles of natural justice and provided full opportunity to the petitioner to cross-examine the witnesses of the

management and also provided full opportunity to the petitioner to lead his evidence in defence. He also tendered in evidence letter (RW-2/B), statement of petitioner (RW-2/C) and letter whereby he had submitted enquiry report (RW-1/D). In cross-examination, he denied that he had not allowed the petitioner to avail the services of a defence assistant. He further denied that he had not explained the procedure to be followed to undertake the enquiry to the petitioner. He denied that he had not afforded an opportunity to the petitioner to cross-examine the witnesses of the management. He denied that he had carried out the enquiry as per the wishes of the management. He denied that he had not followed the proper procedure while conducting the enquiry.

19. Thus, from a careful scrutiny of the entire case record, it is clearly established on record that the reference petition on 93 of 2017 to which the preliminary issue were framed on 28.09.2018, came to be decided by this Tribunal vide its detailed order dated 18.12.2021. As per order dated 18.12.2021, this Tribunal concluded that in the eventuality of the non-cross-examination of the witnesses, not providing opportunity to the petitioner to seek the assistance to defending him by fellow worker from the same establishment and further the workers defending shall be given necessary time for the conduct of enquiry and non-supply thereof chargesheet as well enquiry report before imposing punishment are the glaring example to come to the conclusion that the domestic enquiry conducted against the petitioner is not fair, proper and justified. The same is in violation of principles of natural justice as well as certified standing orders. Therefore, this Tribunal by setting aside the domestic enquiry report afforded reasonable opportunity to the respondent company to lead ocular and documentary evidence to prove the misconduct of the petitioner before this Tribunal.

20. However, the order dated 28.12.2021 passed by this Tribunal has been challenged and assailed before the Hon'ble High Court of Himachal Pradesh by **filing Civil Miscellaneous Petition Main (Original) No. 53 of 2022 in case titled as M/S Fresenius Kabi Oncology Ltd., (Formerly known as Dabur Pharma Ltd.), having formulation and dosage manufacturing plant at Plot No. 19, HPSIDC, Industrial Area Baddi, District Solan H.P. Through its Factory Manager versus Shri Santosh Kumar s/o Shri Kapil Dev Singh, r/o Village Khokhra, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana, decided on 29.07.2022, whereby the Hon'ble High Court of HP, had observed as under:**

1. **“Aggrieved by the order passed by learned H.P. Industrial Tribunal-cum-Labour Court, Shimla (for short “the Tribunal”) in Reference No. 93 of 2017, on 18.12.2021, whereby it dismissed the objections raised by the petitioner-Management, and answered the preliminary issue regarding the domestic inquiry conducted against the workman, in favour of the workman and thereafter directed the petitioner—Management to prove the misconduct of the respondent-Workman, the petitioner-Management has filed the instant petition.**
2. **At the outset, it needs to be noticed that preliminary issue, as framed by the Tribunal was on the basis of law laid down by the Hon'ble Supreme Court in “Cooper Engineering Limited Vs. Sh. P.P. Mundhe”, 1975 SCC (L&S) 443 and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595 and the same reads as under:**

“Whether the domestic enquiry conducted against the petitioner is unfair and violative of principles of natural justice as alleged?

2. **To answer the said issue, the parties had led their respective evidence. However, it is the admitted case of the parties that the respondent-workman had not chosen to cross-examine the witnesses, examined by the petitioner-Management and in one**

case, only a single question has been put to the Management witness, one Sachin Kashyap.

3. **Despite all this, the learned Tribunal proceeded to draw an adverse inference and held that it was the respondent -Workman who was not allowed to cross-examine the witness, despite records establishing to the contrary that an opportunity had been granted but the workman did not choose to cross-examine the witness. It has been specifically noted "Nil opportunity given".**
4. **However, solely on the strength of the aforesaid conjectural observations, the Tribunal proceeded to hold that "non examination of the witnesses, not providing opportunity to the petitioner to seek the assistance to defending him by fellow worker from the same establishment" which observation is also conjectural and has no legs to stand.**
5. **To say the least, the findings as recorded by learned Tribunal are totally perverse and contrary to the records, and cannot sustain and the same are set aside accordingly.**
6. **The instant petition is disposed of with a direction to the Tribunal to decide the preliminary issue afresh. Since the preliminary issue has been framed as far as back on 18.12.2021, the Tribunal is directed to decide the same as expeditiously as possible and in no event later than 30.9.2021. The parties are directed to appear before learned Tribunal on 8.8.2022.**

The pending application(s), if any, are also disposed of."

21. Since, the Hon'ble high Court of Himachal Pradesh has observed that the findings recorded by this Tribunal are totally perverse and contrary to the records, and cannot sustain and the same are set aside, hence, this Tribunal is deciding the preliminary afresh as per the directions of the Hon'ble High Court of HP. As per the directions of the Hon'ble High Court, the parties have appeared before this Tribunal on 08.08.2022 and Shri Rajiv Sharma, Ld. Counsel for the respondent company and Shri J.C. Bhardwaj, AR for the petitioner has stated that they do not want to lead any fresh evidence on the preliminary issue. To this effect their statement recorded separately and placed on record.

22. In the instant case, it is clearly transpired from the perusal of the directions of the Hon'ble High Court that the enquiry is held to be conducted properly and fairly and opportunity of being heard was given to the petitioner. The opportunity to cross-examine the management witnesses were afforded to the petitioner. However, the petitioner has not availed the said opportunity. Since, the workman did not chose to cross-examine the management witnesses, the earlier findings of this Court/Tribunal were ordered to be set aside. It is also held that the proper opportunity was duly given to the petitioner and he was also properly represented to defend his case.

23. More so, after perusing the entire case record and findings of this Tribunal which has been replaced/substituted by the findings of Hon'ble High Court of HP, whereby the findings as recorded by this Court/Tribunal are set aside. Such being the situation, I have no hesitation in holding that the enquiry conducted by the enquiry officer against the delinquent petitioner is just, fair and proper and the enquiry officer had submitted its enquiry report and proceedings which had been conducted in accordance with certified standing orders as applicable to the parties and by following the principles of natural justice.

24. At the cost of repetition, it has been held that the domestic enquiry conducted against the petitioner by the enquiry officer was conducted as per the provisions of Standing Orders and by following the principles of natural justice as applicable to the respondent company.

25. Now, the next question which comes for determination before this Tribunal that when the enquiry held to be just and proper then what course is left with the Court to proceed further in the case?

26. Shri J. C. Bhardwaj, AR for the petitioner has vehemently contended that all the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court/Tribunal for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family i.e. old age parents and children. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he raised slogans against the respondent management and affixed flags of union on the wall of the factory. It is argued that the act of misconduct/misbehavior allegedly committed by the petitioner leading to the dismissal of the petitioner, on the sole ground, is not sustainable. The punishment awarded by the respondent company on the basis of enquiry is not at all warranted. It is therefore prayed that lenient view may please be taken against him.

27. *Per contra*, Shri Rajiv Sharma, Advocate for the respondent company strenuously contended that this Court has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensuration with the allegations levelled against the petitioner in the domestic enquiry which is satisfactorily proved on record. There is no question of awarding the less punishment. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carrier no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

28. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

29. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment/penalty awarded or imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

30. Before proceeding further, I would like to invite the attention the parties to provisions of section 11-A of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it

may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

31. Thus, under section 11-A of the Act even if the domestic enquiry report is held to be valid, the Tribunal has the power to examine as to whether the finding of guilt recorded in the domestic enquiry is sufficient to sustain qua the punishment/penalty imposed to the worker is proper and proportionate to the allegations levelled therein. By now it is fairly well settled that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in Civil Appeal no. 4436 of 2010 titled as **Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

32. Their Lordship of Hon’ble Supreme Court in case tiled as **U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007** that:

“The power under section 11-A imposes vide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words ‘disproportionate’ or ‘grossly disproportionate’ by itself will not be sufficient.

33. Therefore, in the exposition of law enumerated on the aforesaid point as well as bearing in mind the true intent, impact and scope of object of section 11-A, now, I would like to examine the merits of the case of the petitioner.

34. In the long and short of the present industrial dispute, so far as concerning to the assertion of the allegation levelled therein against the petitioner/delinquent regarding causing loss to the petitioner due to his negligent act and the services of the petitioner were dismissed for single instance. As a matter of fact, the petitioner had rendered a long span of approximately 19 years of his carrier. There was no complaint or misconduct in the past service record of the petitioner. On single instance cannot wipe out the entire carrier of the petitioner. The right of living life with dignity and freedom of speech and expression with all reasonable restrictions are duly protected under fundamental right of the Constitution of India. In this case, it is proved that the domestic

enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered humble opinion that the dismissal order would not be justified. This Court had given due weightage to the entire facts and circumstances of the case. Though, the domestic enquiry conducted against the petitioner is valid and proper but still this Court is of the considered opinion that the respondent company has miserably failed in justifying its decision/action for dismissing the services of the petitioner.

35. Admittedly, the petitioner had worked in the capacity of permanent employee with the respondent and he was dismissed from service at once. The petitioner had rendered continuous service of 19 years with the respondent company. There was no complaint from any quarter regarding the misconduct and misbehavior of the petitioner. The past conduct and antecedent of the petitioner is also very important. After applying the principles as laid down in section 11-A of the Act while exercising my discretionary power, I hereby reaches to at an inescapable conclusion that punishment awarded upon the petitioner i.e. dismissal from service, is wholly disproportionate and not in commensuration with the allegations levelled therein against the petitioner. Accordingly, the dismissal order (RW-1/Q) deserves to be set aside and same is hereby quashed and set aside. The punishment imposed by the disciplinary authority is immeasurably disproportionate to the misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, and has also held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove, now, it has to be seen as to what benefit the petitioner is entitled to?

36. The facts narrated and discussed hereinabove would clearly demonstrated that the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner. On behalf of the respondent company it is argued that the company has lost faith/confidence in the worker. On the contrary, Ld. AR for the petitioner prayed for the reinstatement with continuity and seniority and all other consequential past service benefits. Admittedly, it is the prerogative of the employer to engage the person as a worker. An employer cannot be forced or bound to keep an employee in service with whom relation of employer-employee have reached to the ultimate summit of complete loss of confidence/faith between the two. The loss of confidence cannot be subjective but ought to be objective, Keeping in view the attendant facts and circumstance of the case. For example in a case of theft, damage, misappropriation etc. the quantum of theft, damage, misappropriation etc., is not important but what is important is the loss of confidence of employer in employee. There are catena of decisions rendered by the Hon'ble Apex Court **Binny Lal Vs. Their Workers and Anr. AIR 1973 SC 1403, Sarswatipur Tea Company Ltd. and Anr. AIR 1982 SCC 1062, Chandu Lal Vs. Management AIR 1982 SCC 1128, Indian Air Lines Vs. Prabhu D Kannan AIR 2007 548, Sita Ram Vs. Moti Lal 2008 (5) SCC 675, Incharge Officer and anr. Vs. Shankar Shetty 2010 (9) SCC 126, Senior Superintendent Telegraph Vs. Santosh Kumar 2010 (6) SCC 773 and Divisional Controller, KSRTC Vs. M.G Vittal Rao, 2012 (1) SCC 442**, whereby Their Lordship of Hon'ble Apex Court laid down the law that once the employer has lost confidence in the employee, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity and in case of loss of confidence, reinstatement cannot be ordered. The Hon'ble Apex Court also held that indisputably, the industrial court exercise discretionary jurisdiction, but such discretion is required to be exercised judiciously. The discretion enshrined upon the Court burdened with more responsibility by exercising it on sound judicial principles and not to be swayed by whims and fancies or arbitrarily and capriciously. The Hon'ble Apex Court in a plethora of decisions opined that the payment of adequate amount of compensation in place of a direction to be reinstated in service in

case of this nature would sub-serve the ends of justice. Similar is the law laid down in case **Jaipur Development Authority Vs. Ram Sahai 2006 (11) SCC 684, Uttranchal Forest Development Corporation Vs. MC Joshi 2007 (9) SCC 353 and MP Admn. Vs. Tribhuan 2007 (9) SCC 748.**

37. Now, the question is as to what relief, the workman is entitled to? The Hon'ble Apex Court in an authority reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court has observed that "after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

38. Similarly, the Hon'bel High Court of Dehli in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed that "the decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

39. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

40. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M. L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court has held that "what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41)**, **Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514)**, **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232)**, **Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91)**, **Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100)** and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124)**, we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

41. The Hon'ble Apex Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed that "the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

42. Considering the fact that the petitioner was an operator, I deem it proper that reinstatement would not be proper and instead compensation would be a better alternative. Considering the fact on the file, I deem it proper that compensation of ` 2,50,000/- (Two Lacs Fifty Thousand) would be appropriate and would meet both ends of justice. I, accordingly, grant lump sum compensation of ` 2,50,000/ (Rupees Two Lacs Fifty Thousand only) to the workman, to be paid by the respondent company within one month of the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent hospital

to the workman. This issue is accordingly, decided in favour of the workman and against the respondent.

RELIEF

43. As a sequel to my above discussion and findings on issue no.1, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is awarded lump sum compensation of ₹ 2,50,000/- (Two Lacs Fifty Thousand) to the workman, to be paid by the respondent company within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent hospital to the workman. It is expressly made clear that apart from lump sum compensation, the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc., if any, in accordance with law. The reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

44. The reference is answered in the aforesaid terms.

Ordered accordingly.

Announced in the open Court today this 30th day of September, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, CAMP AT KAZA

Reference Number : 192 of 2022
Instituted on : 22-09-2022
Decided on : 21-10-2022

Yeshe Dolma w/o Shri Chhering Angdup r/o Village Leedang, P.O. Lara, Tehsil Kaza, District Lahaul and Spiti, H.P. . .Petitioner.

VERSUS

The Executive Engineer, HPPWD, B & R Division Kaza, District Lahaul & Spiti, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Shri Prateek Kumar, Advocate
For the Respondent : Ms. Reena Chauhan, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.2.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of services of Smt. Yashe Dolma w/o Shri Chhering Angdup, Village Leedang, P.O. Lara, Tehsil Kaza, District Lahaul and Spiti, H.P. by the Executive Engineer, HPPWD B&R Divisiona Kaza, Lahaul & Spiti, H.P. w.e.f. June 2018 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Ms. Yeshe Dolma (hereinafter to be referred as the petitioner) has instituted the claim petition against the Executive Engineer, HPPWD, B&R Division Kaza, District Lahaul & Spiti, H.P. (hereinafter to be referred as respondent) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that the services of the petitioner were initially engaged by the respondent as daily waged beldar on muster roll w.e.f. the year 2008 and she had interrupted worked under the respondent upto June, 2018. During the period of her services, the petitioner was given fictional breaks so that she could not complete 180 days for the purpose of continuous service. The services of the petitioner have been terminated without complying with the necessary provisions of section 25-F of the Act as neither any notice was issued to her nor she had been paid compensation. It is further submitted that vide letter dated 14.09.2007, the State Government issued the directions to issue the full month muster roll instead of breaks but the same was not followed by the respondent. The respondent department had adopted pick and choose method to engagement the workman as some of the junior workmen namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom and Shakuntla Devi have been engaged continuously without any breaks and the petitioner was engaged with some fictional breaks in violation of the provisions of section 25-G of the Act as well as principles of last come first go. Not only this, the respondent department had engaged fresh hands without affording any opportunity to the petitioner.

4. The following relief clause has been appended in the footnote of the claim, read as under:

“The Hon’ble Court may kindly be held the breaks given to petitioner w.e.f. year 2008 to June 2018 as illegal and arbitrary and direct the respondent to count the breaks period in seniority and continuity in service of the petitioner for all purposes.

The Hon’ble Court may kindly be again direct the respondent to pay the wages of breaks period i.e. year 2008 to June 2018 to the petitioner with interest @ 12 % per annum.

The Hon’ble Court may kindly be set aside and quashed the illegal final termination of petitioner w.e.f. June 2018 and direct the respondent to reinstate the services of the petitioner with full back-wages, seniority, continuity in service and with all other consequential service benefits.

The Hon’ble Court may kindly be further direct the respondent to regularize the services of the petitioner on completion of 7 years continuous service w.e.f. 01.01.2015

in the regular pay scale applicable at that relevant time after count the breaks period of petitioner in her seniority and continuity in service and further direct the respondent to pay the arrear to the petitioner from 01.01.2015 to onwards along-with 12% interest w.e.f. 1.1.2015 to till the date of realization of amount.

The Hon'ble Court further direct the respondent to fix the name of the petitioner in beldar seniority list of regular worker above to the junior.

Any other relief deemed fit may kindly be granted in favour of the petitioner”.

5. The lis was resisted and contested by filing inter-alia reply taken preliminary objections that the services of the petitioner were disengaged during extreme winter season on rotational basis.

6. On merits, it is submitted that the services of the petitioner were engaged during June, 2008 followed by succeeding years upto 2019 on rotational basis and no injustice has caused to the petitioner. The services of the petitioner have been utilized on rotational basis as per requirement at site work every year subject to availability of funds and as per the resolution of the concerned villagers which is in practice since early times. The notification dated 14.09.2007 issued by the State Government with respect to issue muster roll for 12 months to the person whose services were engaged by the department with intermittent breaks on continuous basis through the year for the past 10 year or more upto August 2001, is too keeping in view the availability of works and resources. The services of junior person as pointed out by the petitioner have been engaged on the recommendations of the villagers itself with the prior consent of the petitioner. No illegal and artificial breaks have been given to the petitioner by the respondent. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by Ld. Labour Court at Dharamshala, for its final determination, as is evident from order dated 26.02.2020, as under:

1. Whether termination of services of the petitioner by the respondent w.e.f. June 2018 is illegal and unjustified, as alleged. If so, its effect? . . .*OPP.*
2. Whether the claim petition is not maintainable as alleged? . . .*OPR.*
3. Whether the petitioner has no cause of action to file the present claim petition, as alleged? . . .*OPR.*
4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	No
Issue No. 3	No
Relief	Reference is answered in affirmative per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1.

12. In order to substantiate her case, petitioner had examined herself as (PW1) and tendered/proved her affidavit (PW1/A) wherein she has reiterated almost all the averments as made in the claim petition. She also tendered into evidence copy of letter dated 14.09.2007 (PW-1/B), copy of letter dated 24.10.2016 (PW-1/C), copy of award dated 30.09.2015 (PW-1/D), copy of mandays chart (PX), RTI information dated 30.12.2017 (PY) and reply to demand notice dated 7.8.2017 (PZ).

13. In cross-examination, she admitted that she was engaged w.e.f. June 2008. She denied that till the filing of present case she had worked with the respondent on rotational basis. She further denied that she was disengaged as per the resolution dated 13.02.2017, passed by the villagers of Dhankar. She feigned ignorance that a copy of resolution was also given to Assistant Engineer, Sichling. She denied that for this resolution she had also agreed. She further denied that she had filed this case on wrong facts. She denied that the respondent department used to engage the workers on the availability of work and funds. She further denied that juniors to her have also been engaged as per resolution.

14. On the other hand, the respondent department had examined one Shri Rishi Kumar, Assistant Engineer, HPPWD, Losar Sub-Division, Kaza, who stepped into the witness box as RW-1 to depose that the petitioner was engaged on rotation basis in the department in the year 2008. The petitioner had worked on rotation/seasonal basis due to weather conditions and she is still working with the respondent. He further stated that there was an undertaking amongst the villagers to fetch employment for each and every household and therefore the petitioner was engaged on rotation basis. The petitioner had accepted the work on rotation basis out of free will. Neither the artificial breaks were given to the petitioner nor pick and choose method was adopted. The work was provided on the availability of work and funds and subject to weather condition to the villagers of the area.

15. In cross-examination, he admitted that there is no notification of the Government to the effect that the workers shall be engaged on rotation basis with the consent of the villagers. He admitted that nine others similar situated references have been allowed by this Court previously. He feigned ignorance that the workmen mentioned in para no.5 of the claim petition were juniors to the petitioner and their services have been regularized. He stated that there was no agreement of the villagers with the department for providing employment to every villagers on rotation basis. He denied that they have given the fictional breaks to the petitioner so as to prevent her from acquiring the benefits under the law. He admitted that they have engaged around 400 workers under rotation basis.

16. Shri Prateek Kumar, Ld. Counsel for the petitioner has contended with vehemence that the services of the petitioner have been engaged by the respondent department on muster roll basis as daily waged beldar in the month of August, 2001 and since the date of her initial engagement, she was working with the respondent department but the respondent department used to give intentional breaks in the service of the petitioner so that she could not complete the requisite number of days as prescribed for daily wager in the Tribal area just to defeat the provisions of the section 25-F of the Act, which is totally illegal and against the provisions of the Act. He further argued that the respondent had engaged fresh hands without affording any opportunity of being heard to the petitioner. Not only this, the respondent department had also retained juniors of the petitioner who are still working and their services have been regularized. He prayed that the intentional breaks given to the petitioner may kindly be regularized by granting seniority and continuity in her services from the date of her initial engagement with full back-wages.

17. On the contrary, Ms. Reena Chuahan, Ld. Dy. DA through video conferencing has contended that the services of the petitioner have been engaged on rotation/seasonal basis due to weather conditions and she is still working with the respondent department. She contended that here was an undertaking amongst the villagers to fetch employment for each and every household and therefore the petitioner was engaged on rotation basis. The petitioner had accepted the work on rotation basis out of free will. Neither the artificial breaks were given to the petitioner nor pick and choose method was adopted. The work was provided on the availability of work and funds and subject to weather condition to the villagers of the area.

18. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

19. At the very outset, there is absolutely no denial to the fact that the petitioner having been appointed a daily wages basis beldar on muster roll by the respondent. It is proved on record that the petitioner had worked since August, 2001 as is evident from muster roll (PY) obtained by the petitioner under RTI, Act but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 180 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as with the consent of villagers, the petitioner had accepted to work on rotation basis. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner herself accepted the work on rotation basis as there is nothing on record which could establish the plea raised by the department. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Chhering Dolker, Ankit Dolma, Angrup Thuktan, Chhering Yangchen, Chhewang Chhodon, Tashi Angdui, Tandup Cheering Lottey, Anita Devi, Chhering Dolma, Mingur Sonam, Lobzang Palmo, Chhering Norphel, Yanzom and Shakuntla Devi have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

20. Most importantly, a bare glance on mandays charts (PX and RW-1/A), would reveal that initially the petitioner was engaged in the month of August 2001 and worked for a period of 30 days, in the year 2002, she had worked for 60 days, 30 days in 2003, 124 days in 2004, 195/222 days in the year 2005, 154 days in 2006, 188 days in 2007, 104 days in 2008, 151 days in 2009, 82 days in 2010, 141 days in 2011, 141 days in 2012, 80 days in 2013, 141 days in 2014, 160 days in 2015, 183/213 days in 2016, 73 days in 2017, 85 days in 2018 and 85 days in 2019. Therefore, from the aforesaid mandays charts (PX and RW-1/A), it is more than clear that the petitioner is continuously working with the respondent department from the year 2001 and the respondent department used to give fictional breaks in her service in order to defeat the provisions of section 25-F of the Act, which cannot be legalized in any manner. It can be noticed that till 2004, petitioner

has worked for less than 180 days whereas in the year 2005 she had worked for more than 180 days as required in Tribal area. It may be pertinent to state here that vide letter dated 14.9.2007 (PW1/B), direction has been given by Government to provide muster roll to all labourers, who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 180 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Since, it has been proved on record that the petitioner was engaged w.e.f. August 2001 by the respondent department, hence, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons, who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service. Although, petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen.

21. So far as concerning the defence raised from the side of the respondent regarding the disengagement of the services of the petitioner as the developmental activities remained closed due to unavailability of work and funds, as well the defence of rotational service or employment on chit basis. Such, an argument is devoid of force and the same cannot be accepted. Further, in view of the admission of Rish Kumar (RW-1), no such resolution has been placed on record, even if it is there, it is not binding on the State Government and such practices of engagement on rotational basis without approval of the Government are deprecated as the respondent being the state Government is to act as per the Rules and regulations and the respondent in their individual capacity cannot devise its own system of engagement on rotational basis. Their Lordship of Hon'ble High Court held that the rotational pattern of employment to be designed with a view to avoid any legitimate claim of permanence of tenure of workman which is termed as "unfair labour practice" (please see Sunil Prahlad Khurana and Ors. Vs. M/s Bajaj Auto Ltd., 2021 Law Suit 85, Bombay). Again the plea of the respondent that the petitioner had received hefty amount of compensation on disengagement of her services on rotational basis is again not established on record. Admittedly, no such receipt has been produced on record by the respondent and more particularly the petitioner has specifically denied that she was given handsome amount as per the resolution for not working on rotational basis.

22. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2019 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service except back wages. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 2

23. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has contended that present claim

petition is not maintainable as the petitioner was engaged on rotation basis. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

24. In support of this issue no specific evidence has been led by the respondent department which could go to show that as to how the petitioner has no cause of action to file the present claim petition especially when the present claim petition has been filed by her pursuant to the reference sent by appropriate government to this Court for its legal adjudication. Therefore, this issue is decided in favour of the petitioner and against the respondent department.

RELIEF

25. As a sequittor, to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent department from the date of her initial engagement i.e. w.e.f. August, 2001 and that the breaks given by the respondent department being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent department with all consequential benefits i.e. seniority and continuity except back wages. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

26. The reference is answered in the aforesaid terms.

27. Let one authenticated copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to Record Room.

Announced in the open Court on this 21st Day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla Camp at Kaza.

SPECIFIC NOTIFICATION FINANCE DEPARTMENT

NOTIFICATION

Shimla, the 19th January, 2023

No.Fin-2-C(12)-1/2022(I).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of 13-year tenure for an aggregate amount of

Rs. **700 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock upto 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **January 24, 2023**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **January 24, 2023**.

- (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.
- (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **January 25, 2023**

Method of Payment :

6. Successful bidders will make payments on **January 25, 2023** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **13-year** tenure. The tenure of the Stock will commence on **January 25, 2023**.

Date of Repayment :

8. The loan will be repaid at par on **January 25, 2036**.

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **July, 2025 and January, 2025**.

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

Sd/-
*Secretary to the Government of Himachal Pradesh,
Finance Department.*

**SPECIFIC NOTIFICATION
FINANCE DEPARTMENT**

NOTIFICATION

Shimla, the 19th January, 2023

No.Fin-2-C(12)-1/2022(II).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of **15-year** tenure for an aggregate amount of **Rs. 800 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock upto 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **January 24, 2023**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **January 24, 2023**.

- (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.
- (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **January 25, 2023**

Method of Payment :

6. Successful bidders will make payments on **January 25, 2023** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **15-year** tenure. The tenure of the Stock will commence on **January 25, 2023**.

Date of Repayment :

8. The loan will be repaid at par on **January 25, 2038**.

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **July, 2025 and January, 2025**.

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

Sd/-
*Secretary to the Government of Himachal Pradesh,
Finance Department.*

**In the Court of Dr. Harish Gajju, H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H. P.)**

In the matter of :

1. Sumit Rana aged 37 years s/o Sh. Rajinder Singh Rana, r/o V.P.O. Tihra, Tehsil Sujanpur, District Hamirpur (H.P.).

2. Manisha Majhi aged 25 years d/o Sh. Padam Bahadur Bote, Ward No. 4, Madhya Nepal, Tehsil Lamjung, District Lamjung Nepal . . Applicants.

Versus

The General Public . . Respondent.

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Sumit Rana aged 37 years s/o Sh. Rajinder Singh Rana, r/o V.P.O. Tihra, Tehsil Sujanpur, District Hamirpur (H.P.) and Manisha Majhi aged 25 years d/o Sh. Padam Bahadur Bote, Ward No. 4, Madhya Nepal, Tehsil Lamjung, District Lamjung Nepal have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 28-09-2022 at Arya Samaj Marriage Mandal, Rohini, Delhi as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 20-01-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 20-12-2022 under my hand and seal of the court.

Seal.

Sd/-
*Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H.P.).*

**In the Court of Dr. Harish Gajju, H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H. P.)**

In the matter of :

1. Kulwant Singh aged 50 years s/o Sh. Braham Dass, r/o V.P.O. Bajrol, Tehsil Sujanpur, District Hamirpur (H.P.).

2. Renu Devi aged 42 years d/o Sh. Ramesh Chand, r/o Village Chhamb, P.O. Kakkar, Tehsil Sujanpur, District Hamirpur (H.P.) . . Applicants.

Versus

The General Public . . Respondent.

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Kulwant Singh aged 50 years s/o Sh. Braham Dass, r/o V.P.O. Bajrol, Tehsil Sujanpur, District Hamirpur (H.P.) and Renu Devi aged 42 years d/o Sh. Ramesh Chand, r/o Village Chhamb, P.O. Kakkar, Tehsil Sujanpur, District Hamirpur (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 04-03-1999 at Village Chhamb, P.O. Kakkar, Tehsil Sujanpur, District Hamirpur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 22-01-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 02-01-2023 under my hand and seal of the court.

Seal.

Sd/-
Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H.P.).

ब अदालत तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी, नादौन,
तहसील नादौन, जिला हमीरपुर, हि0प्र0

मिसल नम्बर : 19/2022

आगामी सुनवाई :

श्री राज कुमार पुत्र श्री मनसा राम, निवासी महाल त्युगली, मौजा हथोल, तहसील नादौन, जिला हमीरपुर, हि0 प्र0

बनाम

श्री राज कुमार पुत्र श्री मनसा राम, निवासी महाल त्यागली, मौजा हथोल, तहसील नादौन, जिला हमीरपुर, हि0 प्र0 ने दिनांक 07-09-2022 को इस अदालत में एक प्रार्थना-पत्र प्रस्तुत किया है कि उसका नाम कागजात माल महाल त्यागली, मौजा हथोल, तहसील नादौन, जिला हमीरपुर, हि0 प्र0 में राज कुमार पुत्र श्री मनसा राम दर्ज है परन्तु अन्य जगह जैसे कि स्कूल प्रमाण-पत्र आधार कार्ड व परिवार नकल वगैरह में राजीव कुमार पुत्र मनसा राम दर्ज है। प्रार्थी का कहना है कि यह दोनों नाम उसी के हैं। प्रार्थी अब दुरुस्ती करवा कर कागजात माल महाल त्यागली, मौजा हथोल, तहसील नादौन, जिला हमीरपुर, हि0प्र0 में अपना नाम राजकुमार उपनाम राजीव कुमार पुत्र श्री मनसा राम दर्ज करवाना चाहता है।

अतः इस मुस्त्री मुनादी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी के नाम को दुरुस्त करने बारे कोई उजर एवं एतराज हो तो वह असालतन या वकालतन तारीख पेशी 06-02-2023 को सुबह 10 बजे मुकाम तहसील कार्यालय नादौन में असालतन या वकालतन हाजिर अदालत होकर अपना उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। तारीख पेशी के बाद किसी किस्म का एतराज काबिले समायत न होगा। तथा प्रार्थी के प्रार्थना-पत्र पर नाम दुरुस्ती बारे आवश्यक आदेश पारित कर दिये जायेंगे।

यह मुस्त्री मुनादी मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 19-12-2022 को जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
नादौन, जिला हमीरपुर, हि0प्र0।

In the Court of Sh. Ajay Kumar Singh, Executive Magistrate-cum-Tehsildar, Dhatwal at Bijhari, Distt. Hamirpur (H. P.) Exercising the Powers of Marriage Officer

In the matter of :

1. Chaman Lal s/o Ram Saran, r/o Village Balghar, Tehsil Jhandutta, District Bilaspur (H.P.).

2. Geetanjali d/o Rampal r/o Village Sadauli, Tehsil Sadar, District Bilaspur (H.P.)

...Applicants.

Versus

General Public

...Respondent.

Subject.— Notice General Public.

Sh. Chaman Lal s/o Ram Saran, r/o Village Balghar, Tehsil Jhandutta, District Bilaspur (H.P.) and Geetanjali d/o Rampal r/o Village Sadauli, Tehsil Sadar, District Bilaspur (H.P.) at present residing at the house of Sh. Lachhman Dass s/o Bhagat Ram r/o Village Raily, Tappa Dhatwal District Hamirpur (H.P.) have applied in this office for the registration of their marriage. As per application and affidavits of the both parties it is found that they have solemnized their marriage on 12-03-2019 at Shiv Mandir Bijhari, Tehsil Bijhari, Distt. Hamirpur (H.P.).

General public is hereby informed through this notice that if any person having any objection regarding the registration of this marriage can personally or in writing file their objections before this court on or before 11-03-2022. If no objection is received from any person regarding the registration of this marriage the same marriage will be registered accordingly.

Issued under my hand and seal of the court on 11-02-2022.

Seal.

Sd/-

*Marriage Officer-cum-Executive Magistrate,
Dhatwal at Bijhari, District Hamirpur (H.P.).*

**In the Court of Swati Dogra, H.A.S., Marriage Officer-cum-Sub-Divisional
Magistrate, Bhoranj, Distt. Hamirpur, Himachal Pradesh**

1. Pradeep Kumar Aged 36 years s/o Sh. Sukh Dev, r/o Village & P.O. Patta, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

2. Poonam Kumari Aged 33 years wd/o Sh. Rakesh Kumar, r/o Village & P.O. Beha, Tehsil Nadaun, District Hamirpur H.P.) . . Applicants.

Versus

General Public

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Pradeep Kumar Aged 36 years s/o Sh. Sukh Dev, r/o Village & P.O. Patta, Tehsil Bhoranj, Distt. Hamirpur (H.P.) & Poonam Kumari Aged 33 years wd/o Sh. Rakesh Kumar, r/o Village & P.O. Beha, Tehsil Nadaun, District Hamirpur (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 27-08-2022 at Kulja Devi Mandir, Town Bharari as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 08-02-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 28-12-2022 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur (H.P.).*

In the Court of Sh.Vijay Kumar, HPAS, Sub-Divisional Magistrate-cum-Special Marriage Officer Nadaun, District Hamirpur (H.P.)

1. Arun Kumar s/o Sh. Ram Nath Dogra, r/o Village Janglu, P.O. Jalari, Tehsil Nadaun, District Hamirpur (H.P.).

2. Dimple d/o Sh. Jagdish Chand, r/o Ward No. 7, Lundri, P.O. Dhanwin, Tehsil and District Hamirpur (H.P.)

Applicants.

Versus

General Public

Subject.— Proclamation for the registration of marriage under sections 15 & 16 of Special Marriage Act, 1954.

Arun Kumar s/o Sh. Ram Nath Dogra, r/o Village Janglu, P.O. Jalari, Tehsil Nadaun, District Hamirpur (H.P.) and Dimple d/o Sh. Jagdish Chand, r/o Ward No. 7, Lundri, P.O. Dhanwin, Tehsil and District Hamirpur (H.P.) filed an application alongwith affidavits in the court of undersigned under sections 15 & 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 14-02-2017 at Ward No. 7, Lundri, P.O. Dhanwin, Tehsil and District Hamirpur (H.P.) and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the General Public is hereby informed through this notice that if any person having any objections regarding this can file the objections personally or in writing before this court on or before 14-02-2023 at 5.00 P.M. After that it will not be entertained and the marriage will be registered accordingly.

Issued on this day 30-12-2022 under my hand and seal of the court.

Seal.

VIJAY KUMAR, HPAS,
Sub-Divisional Magistrate,
Nadaun, District Hamirpur (H.P.).

In the Court of Sh.Vijay Kumar, HPAS, Sub-Divisional Magistrate-cum-Special Marriage Officer Nadaun, District Hamirpur (H.P.)

1. Sh. Sushant Puri s/o Sh. Shashi Puri, r/o Village Bela P.O. Bela, Tehsil Nadaun, District Hamirpur (H.P.).

2. Brigette Antonia Pappas d/o Sh. Anthony Mark Pappas, r/o 6 Lvana Street, Rockbank Victoria 3335, Australia.

Applicants.

Versus

General Public

Subject.— Proclamation for the registration of marriage under sections 15 & 16 of Special Marriage Act, 1954.

Sh. Sushant Puri s/o Sh. Shashi Puri, r/o Village Bela P.O. Bela, Tehsil Nadaun, District Hamirpur (H.P.) and Brigette Antonia Pappas d/o Sh. Anthony Mark Pappas, r/o 6 Lvana Street, Rockbank Victoria 3335, Australia have filed an application alongwith affidavits in the court of undersigned under sections 15 & 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 02-12-2022 at Palampur in Strling Hotal and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the General Public is hereby informed through this notice that if any person who has the objections regarding this marriage can file the objections personally or in writing before this court on or before 06-03-2023 at 5.00 P.M. After that it will not be entertained and the marriage will be registered accordingly.

Issued on this day 30-12-2022 under my hand and seal of the court.

Seal.

VIJAY KUMAR, HPAS,
*Sub-Divisional Magistrate,
Nadaun, District Hamirpur (H.P.).*

CHANGE OF NAME

I, Lata Sharma d/o Sh. Naresh Sharma, r/o Village Ghalana, P.O. Kuthar, Tehsil Theog, Distt. Shimla (H.P.) declare that I have changed my name from Lata Sharma (Old name) to Lovely Sharma (New name). In future I may be known as Lovely Sharma please all concerned note.

LATA SHARMA
*d/o Sh. Naresh Sharma,
r/o Village Ghalana, P.O. Kuthar,
Tehsil Theog, Distt. Shimla (H.P.).*

CORRECTION OF NAME

I, Sania Gurung d/o Sh. Vinesh Gurung, Village Lower Thari, P.O. Subathu, Distt. Solan declare that in my class 10th Roll Number 17247498 CBSE Certificate, my mother's name written as Aarti Gurung. Kindly correct it as Arti Gurung.

SANIA GURUNG
*d/o Sh. Vinesh Gurung,
Village Lower Thari,
P.O. Subathu, Distt. Solan (H.P.).*

